

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Dwayne Wilson,

Case No. 3:17 CV 2500

Petitioner,

ORDER ADOPTING
REPORT AND RECOMMENDATION

-vs-

JUDGE JACK ZOUHARY

Warden John Coleman,

Respondent.

Petitioner *pro se* Dwayne Wilson, a prisoner in state custody, filed a Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254 (Doc. 1). This case was referred to Magistrate Judge Jonathan Greenberg for a Report and Recommendation (R&R) under Local Rule 72.2. The R&R (Doc. 16) recommends the Petition be dismissed as procedurally defaulted (*id.* at 18, 28). The deadline for objections has passed, and Wilson filed none. Wilson did file, however, a Motion to Stay (Doc. 17), which Coleman opposes (Doc. 18).

Turning first to Wilson's Motion to Stay, he asks this Court to stay his Petition pursuant to *Rhines v. Weber*, 544 U.S. 269, 279 (2005). But *Rhines* discussed staying "mixed" petitions -- those that include both exhausted and unexhausted claims. *Id.* at 271. The reason for staying a mixed petition is that a stay "allow[s] the petitioner to present his unexhausted claims to the state court in the first instance, and then to return to federal court for review of his perfected petition." *Id.* at 271–72. Here, by contrast, *Rhines*'s stay-and-abeyance procedure does not apply because "this is not a mixed petition" (Doc. 18 at 3). Wilson's Petition contains only claims that are procedurally defaulted (Doc. 16 at 16, 27). Thus, a stay here is not appropriate.

Turning next to the R&R, this Court reviews *de novo* those portions of the R&R to which objections are made. 28 U.S.C. § 636(b)(1). Failure to file objections within the timeframe set forth in the statute constitutes a waiver of *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 153–55 (1985); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). This Court has reviewed the R&R and finds it accurately states the facts and law. This Court therefore adopts the R&R in its entirety.

Accordingly, the Motion to Stay (Doc. 17) is denied, and the Petition (Doc. 1) is dismissed. This Court further certifies an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §§ 1915(a)(3), 2253(c).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

May 6, 2019